

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

THERESA D. LARA,

No. C 11-0607 RS

Plaintiff,

v.

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT**

COUNTY OF SANTA CLARA, et al.,

Defendants.

I. INTRODUCTION

California case and statutory law is settled that peace officers carrying out an eviction may not proceed against a person residing on the premises who is not named in the writ of execution, if that person asserts a right of possession. Plaintiff Theresa Lara brought this action in alleging claims under 42 U.S.C. §1983 and state law, contending that Santa Clara County Sheriff's deputies violated that principle when they found her residing as a subtenant in an apartment leased by her sister and brother-in-law, and advised her that she must vacate the premises pursuant to an unlawful detainer judgment. Because the undisputed facts demonstrate that Lara gave the deputies no reason to presume she was asserting a right of possession, her legal rights were not violated, and her claims in this action fail. The motion for summary judgment brought by Santa Clara County and the

1 individual defendants (collectively “the County”) will therefore be granted, and Lara’s cross motion
2 denied.

3 II. BACKGROUND

4 In May of 2009, Elizabeth and Freddy Valdez entered into a written lease for a three
5 bedroom apartment in a building in Campbell, California. Elizabeth’s sister, plaintiff Lara, moved
6 in with the Valdezes, sharing a bedroom with their children. The arrangement apparently was
7 somewhat informal, and not intended to be permanent. There is no dispute that Lara was never
8 added to the lease. She paid \$450 monthly (approximately one-third the total rent) directly to her
9 sister.

10 In support of its motion, the County submits declarations from the property managers
11 asserting they had no knowledge Lara was occupying the apartment at the time of the eviction. In
12 response, Lara offers a declaration describing her interactions with the property managers from
13 which it could be inferred that they knew or should have known she was effectively living there.
14 The County objects to that portion of Lara’s declaration on grounds of relevance. While ultimately
15 the County is correct that any dispute regarding whether the property managers knew or should have
16 known Lara was residing in the apartment is immaterial to the issues presented by these motions,
17 Lara cannot be faulted for responding to factual assertions initially made in the County’s moving
18 paper, as if they were significant.¹

19 The Valdezes failed to pay rent in November and December of 2009, resulting in an
20 unlawful detainer judgment entered against them on December 10, 2009. The following day, the
21 County posted the Notice to Vacate, Writ of Possession and a blank Claim of Right to Possession
22 form on the apartment door, and mailed copies to the Valdezes. The Notice to Vacate indicated that
23 the eviction date was December 18, 2009. While Lara admits she was living at the apartment and
24

25 ¹ The County’s other evidentiary objections, submitted in a separate document in violation of Civil
26 Local Rule 7-3, are largely boilerplate and include many that border on the frivolous. For example,
27 the County objects that Lara lacks personal knowledge to describe the appearance of the Sheriff’s
28 deputies, despite the fact that she plainly is declaring what she saw and perceived. To the extent any
of the objections may be well taken on one or more technical points, they do not materially affect
the analysis.

1 present during most of this time period, she contends she never saw the posted notice or the mailed
2 copies.

3 On December 15th, Lara received a text message from her sister advising her that, “they are
4 making us move out.” When Lara called her sister, she was told they all had to vacate the apartment
5 by the 18th. Lara, who had worked as a paralegal and had prior personal experience with eviction
6 proceedings, assumed that the process was not quite as far along—i.e., that only a notice to pay rent
7 or quit had been posted. Her sister also mentioned an unpaid PG&E bill, so Lara believed that
8 perhaps the only issue was a failure to reimburse the landlord for utilities incurred when they first
9 moved in, prior to switching the billing to the Valdezes’ own name. Lara asked the Valdezes to
10 show her any paperwork they had received, but they never did so. Lara also contends she searched
11 the superior court website, but was unable to locate any pending proceeding against the Valdezes.

12 On December 17th, Lara contacted her attorney, who then sent a letter to the property
13 owners informing them that Lara had heard about an unlawful detainer action but had not been
14 served with any papers, and that any eviction from the premises would be unlawful. Neither Lara
15 nor her counsel contacted the court or the sheriff’s department. On that same day, Lara watched her
16 sister and brother-in-law pack up their things and move out of the apartment. She stayed, however,
17 still believing that there was at most some small amount owing that she could pay, and/or that she
18 could not be evicted in any event, because she had not been served.

19 On Friday, December 18, 2009, defendant Deputies Moreno and Craig called the property
20 managers to inform them they were headed to the apartment to carry out the eviction. After arriving
21 on site, they met with the property managers and then went to the apartment, where they informed
22 Lara that she had to vacate the premises because of the unlawful detainer judgment related to
23 nonpayment of rent. Lara told the deputies that this was the first time she was learning that the
24 eviction was related to nonpayment of rent and that she had not been served with any legal process
25 related to any unlawful detainer action.

26 Lara asked the deputies for a copy of any court order or other document requiring her to
27 vacate the apartment. In response, the deputies posted a copy of the Notice to Vacate outside the
28 door of the apartment. Lara testified that the deputies were cordial.

1 After reading the Notice to Vacate, Lara asked the deputies if she could call her attorney and
2 they said “yes”. Lara placed a telephone call to her counsel. The deputies spoke with the property
3 managers to inform them that Lara was still occupying the apartment.

4 The property managers and the deputies then went back to the apartment to speak with Lara.
5 The deputies stood back as the property managers and Lara conversed. The County insists that Lara
6 reached a voluntary agreement with the property managers to move out, once she learned that it was
7 not a minor matter and that two months’ rent was past due and owing. The managers offered that if
8 Lara was unable to complete her move out by 5:00 p.m. that day, she could return later to retrieve
9 anything left behind. Lara ultimately took advantage of that offer—although she left the premises
10 by 5:00 that day, she returned the following week to pick up additional belongings. Lara insists,
11 however, that her departure was *not* voluntary, but was the direct result of the armed deputies telling
12 her that she must leave. Specifically, Lara declares, “[o]ne of said sheriff’s deputies told Plaintiff
13 that not having been served with court papers and/or the absence of Plaintiff’s name on court papers
14 was/were not a fact/facts which would cause said defendant sheriff’s deputies to rescind or withdraw
15 their order that Plaintiff vacate apartment 3 at the Shamrock Drive Property.”

16 The County’s description of the conclusion of the incident also is not entirely consistent with
17 its argument that Lara departed voluntarily. The County states, “[a]fter the Property Managers and
18 Plaintiff had reached an agreement, the Deputies assisted the Property Managers in changing the
19 locks *and completing the eviction* and then left.” (Emphasis added.) While the County may
20 contend that the eviction was only being “completed” with respect to the Valdezes, and in the sense
21 that possession of the property was being returned to the owners, Lara’s departure occurred during,
22 and as part of, an ongoing eviction proceeding, regardless of the extent to which she “agreed” to
23 vacate the premises.

24 25 III. LEGAL STANDARD

26 Summary judgment is proper “if the pleadings and admissions on file, together with the
27 affidavits, if any, show that there is no genuine issue as to any material fact and that the moving
28 party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). The purpose of summary

judgment “is to isolate and dispose of factually unsupported claims or defenses.” *Celotex v. Catrett*,
 477 U.S. 317, 323-24 (1986). The moving party “always bears the initial responsibility of
 informing the district court of the basis for its motion, and identifying those portions of the
 pleadings and admissions on file, together with the affidavits, if any which it believes demonstrate
 the absence of a genuine issue of material fact.” *Id.* at 323 (citations and internal quotation marks
 omitted). If it meets this burden, the moving party is then entitled to judgment as a matter of law
 when the non-moving party fails to make a sufficient showing on an essential element of the case
 with respect to which he bears the burden of proof at trial. *Id.* at 322-23.

The non-moving party “must set forth specific facts showing that there is a genuine issue for
 trial.” Fed. R. Civ. P. 56(e). The non-moving party cannot defeat the moving party’s properly
 supported motion for summary judgment simply by alleging some factual dispute between the
 parties. To preclude the entry of summary judgment, the non-moving party must bring forth
 material facts, *i.e.*, “facts that might affect the outcome of the suit under the governing law
 Factual disputes that are irrelevant or unnecessary will not be counted.” *Anderson v. Liberty Lobby, Inc.*,
 477 U.S. 242, 247-48 (1986). The opposing party “must do more than simply show that there
 is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio*,
 475 U.S. 574, 588 (1986).

The court must draw all reasonable inferences in favor of the non-moving party, including
 questions of credibility and of the weight to be accorded particular evidence. *Masson v. New Yorker*
Magazine, Inc., 501 U.S. 496 (1991) (*citing Anderson*, 477 U.S. at 255); *Matsushita*, 475 U.S. at
 588 (1986). It is the court’s responsibility “to determine whether the ‘specific facts’ set forth by the
 nonmoving party, coupled with undisputed background or contextual facts, are such that a rational
 or reasonable jury might return a verdict in its favor based on that evidence.” *T.W. Elec. Service v.*
Pacific Elec. Contractors, 809 F.2d 626, 631 (9th Cir. 1987). “[S]ummary judgment will not lie if
 the dispute about a material fact is ‘genuine,’ that is, if the evidence is such that a reasonable jury
 could return a verdict for the nonmoving party.” *Anderson*, 477 U.S. at 248. However, “[w]here the
 record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there
 is no ‘genuine issue for trial.’” *Matsushita*, 475 U.S. at 587.

IV. DISCUSSION

In Lara's view, this case begins and ends with *Arrieta v. Mahon*, 31 Cal.3d 381 (1982), which she insists is directly on point and compels the conclusion that her constitutional rights were violated. *Arrieta* was an action for declaratory and injunctive relief brought to challenge the policy of the Los Angeles County Marshal, "when enforcing a writ of execution after an unlawful detainer judgment, to evict all occupants of the premises, whether or not they were named in the writ." *Id.* at 383. The trial court concluded, and the California Supreme court affirmed, that "the eviction of any adults not named in the writ who claim a right to possession of the disputed premises that arose before the unlawful detainer action was commenced, violated the rights of such individuals to procedural due process under the Fourteenth Amendment of the United States Constitution and article I, section 7, subdivision (a) of the California Constitution." *Id.* at 383-84.

Although the California Supreme Court's conclusion as to what the federal Constitution requires is not strictly binding in this forum, the basic principle of *Arrieta* is sound, and the County does not dispute that tenants unnamed in an unlawful detainer have due process rights. Additionally, the California legislature effectively codified the holding in *Arrieta* by enacting Code of Civil Procedure §1174.3, which provides a formal procedure for making a claim of right of possession. A California Judicial Council form has been promulgated for making such claims. As noted, a blank copy of that form was posted on the apartment door with the eviction notice, although Lara contends she saw none of the posted material.

While not challenging the general rule of *Arrieta* or §1174.3, the County argues it is entitled to summary judgment finding no constitutional violation here for two basic reasons:

1. *Lara's "agreement" to move out*

As noted, the County contends that Lara was not evicted at all, but that she voluntarily moved out once she learned how much rent was actually past due. This issue would not be subject to resolution on summary judgment. There is evidence from which a trier of fact could reasonably conclude that Lara vacated the apartment as a direct result of the deputies' presence and statements that she was legally obligated to do so.

1 2. *Lara's failure to submit a formal claim of possession*

2 The County argues it is undisputed that Lara had actual notice of the pending eviction, but
3 never filed with the court, or gave to the deputies, a written claim of right of possession. The
4 County relies on *Cardenas v. Noren*, 235 Cal. App. 3d 1344 (1991) for the proposition that unless a
5 tenant utilizes the procedures set out in §1174.3, the sheriff is entitled to evict. *Cardenas*, however,
6 involved an unusual factual and procedural situation where a plaintiff was attempting to obtain a
7 writ of mandate to compel a sheriff to *restore* possession of the premises. *Id.* at 1347. While the
8 court stated that the plaintiff could have protected himself in the first instance by following the
9 procedures of §1174.3, the holding of *Cardenas* was merely that, “[e]ven if the sheriff had
10 improperly evicted appellant, he was not under a present, ministerial duty to restore appellant to
11 possession.” *Id.* at 1350. *Cardenas* thus does not support the notion that a sheriff is always entitled
12 to evict persons unnamed in a writ of possession unless they have strictly complied with §1174.3.

13 Lara argues that, in the circumstances here, she had no ability to comply with §1174.3,
14 because she could not have filled out and filed the requisite Judicial Council form when she did not
15 know the case name and number, and indeed could not even confirm a case actually existed. The
16 fact that she might not been able to file the document with the court, however, does not explain why
17 she could not have handed a claim form, with case information left blank, to the deputies, especially
18 since she had consulted an attorney the day before.

19 Nevertheless, to the extent the County contends it is entitled to judgment simply because
20 Lara did not submit a written claim of exemption, either partially or completely filled out, the
21 argument is not persuasive. The due process issue identified in *Arietta* requires a meaningful
22 opportunity to be heard. The injunction entered in *Arietta* required the marshal to give notice that a
23 person claiming a right of possession need only “contact” the marshal’s office. As the court stated,
24 “[o]nce the marshal discovers that a person not named in the writ of execution claims a right to
25 possession accruing before the unlawful detainer proceeding commenced, he may not evict that
26 person without a further order of court.” *Arrieta*, 31 Cal.3d at 390.

27 The fact that the California Legislature subsequently enacted a procedure to *facilitate* the
28 making of claims for possession, does not somehow *limit* constitutional rights. If sheriffs encounter

1 a person in possession of the premises who is not named in the writ, and that person appears to be
2 asserting a right to possession, it is no defense that the person has not already filled out and filed the
3 appropriate Judicial Council form. Although in this instance Lara had actual notice prior to the
4 sheriffs' arrival that an eviction order *might* exist, an unnamed party often may have no prior notice.
5 To require persons to have already filed, or at least already be in possession of, a filled out Judicial
6 Council form when the sheriffs show up for an eviction is not due process.

7 That said, nothing in *Arrieta*, §1174.3, or general principles of due process, give rise to any
8 duty on the part of peace officers carrying out an eviction to provide legal advice, or to make other
9 affirmative efforts to assist persons in asserting a claim of a right to possession. The undisputed
10 facts here show that the deputies were "cordial," gave Lara the opportunity to seek legal advice from
11 her attorney, and allowed her to discuss the situation with the apartment managers. There is no
12 evidence that Lara ever said anything to the deputies that they should have reasonably construed as a
13 claim of a right to possession. Even assuming that from her subjective point of view, Lara's
14 agreement to move out was made under duress, the deputies had no reason to think anything other
15 than that the situation had been amicably resolved after Laura spoke both with her legal counsel and
16 with management, and had come to a full understanding of both the factual circumstances and her
17 legal rights.

18 Imposing liability under these undisputed circumstances would require placing on peace
19 officers an obligation to determine what rights a person *might* be able to claim, and to encourage
20 him or her to do so, regardless of whether the person is actually asserting, or desires to assert, those
21 rights. Officers would be inhibited from attempting to allow peaceful and amicable resolutions to
22 be negotiated among the affected parties. Neither due process nor any other principle of law
23 supports such a result. Accordingly, Lara cannot show her rights were violated, defendants' motion
24 for summary judgment must be granted, and her cross-motion for summary judgment must be
25 denied.²

26 _____
27 ² Lara's state law claims for negligence and "wrongful eviction" are subject to summary judgment
28 for the additional and independent reason that she failed to file a timely pre-suit tort claim against
the County. Lara's opposition effectively concedes this point, by arguing only that the failure to file
a tort claim does not bar recovery under 42 U.S.C. § 1983. Lara's Bane Act claim, Cal. Civil Code
§52.1, also fails in any event. Even assuming the deputies somehow violated Lara's constitutional

V. CONCLUSION

Defendants' motion for summary judgment is granted and plaintiffs' motion for summary judgment is denied. A separate judgment will issue.

IT IS SO ORDERED.

Dated: 8/24/12



RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE

rights, there is no evidence they did so through "threats, intimidation, or coercion" within the meaning of the Bane Act.